

House Study Bill 232 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
WAYS AND MEANS BILL BY
CHAIRPERSON SANDS)

A BILL FOR

1 An Act relating to a tax credit for investments through rural
2 business growth funds for small rural businesses, providing
3 for a fee, and including applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 15E.81 Definitions.

2 As used in this part, unless the context otherwise requires:

3 1. *"Affiliate"* means the same as defined in section 423.1.

4 2. *"Cumulative operating income"* means the sum of the
5 following:

6 a. The rural business growth fund's taxable income as
7 determined under Internal Revenue Code section 703 except that
8 the items described in Internal Revenue Code section 703(a)(1)
9 shall be aggregated with the tax items of the rural business
10 growth fund that are not required to be stated separately for
11 tax purposes, and any gain resulting from the sale of a capital
12 asset under Internal Revenue Code section 1221(a) or property
13 described in Internal Revenue Code section 1231 shall not be
14 included in taxable income.

15 b. Deductions under Internal Revenue Code section 165 to the
16 extent the losses were realized from eligible rural business
17 growth investments.

18 c. Deductions under Internal Revenue Code sections 167 and
19 168, including the additional first-year depreciation under
20 Internal Revenue Code section 167(k) and any other depreciation
21 and amortization deductions allowed under the Internal Revenue
22 Code.

23 d. Start-up expenditures amortized under Internal Revenue
24 Code section 195.

25 e. Organizational expenses amortized under Internal Revenue
26 Code section 709.

27 3. *"Eligible investment"* means an equity investment in a
28 rural business growth fund that meets all of the following
29 conditions:

30 a. The taxpayer's equity investment is made in cash to the
31 rural business growth fund after the effective date of this
32 Act.

33 b. The equity investment is used by the rural business
34 growth fund to make rural business growth investments in rural
35 business concerns located in Iowa within twenty-four months of

1 the equity investment in a rural business growth fund.

2 *c.* The equity investment is designated by the rural business
3 growth fund as an eligible investment and is qualified by the
4 authority pursuant to section 15E.83, subsection 1.

5 *d.* The rural business growth fund manager invests at
6 least ten percent of the equity investment in the eligible
7 investment.

8 4. "*Internal Revenue Code*" means the same as defined in
9 section 422.3.

10 5. "*Operating company*" means any business other than a
11 country club, racetrack, or other facility used for gambling,
12 a store whose principal purpose is the sale of alcoholic
13 beverages for consumption off premises, a massage parlor, a hot
14 tub facility, a tanning facility, a business engaged in the
15 development or holding of intangibles for sale, a private or
16 commercial golf course, farming operation, or an entity that
17 derives or projects to derive fifteen percent or more of its
18 annual revenue from the rental or sale of real estate unless
19 such entity is controlled by or under common control with
20 another business and the other business does not derive or
21 project to derive fifteen percent or more of its annual revenue
22 from the rental or sale of real estate and is the primary
23 tenant of the real estate leased from the entity.

24 6. "*Rural area*" means an area outside a standard
25 metropolitan statistical area, an area within a community with
26 a population of fifty thousand people or less based on the most
27 recent decennial census, or an area that has been determined
28 to be rural in character as determined by the undersecretary
29 for rural development of the United States department of
30 agriculture.

31 7. "*Rural business concern*" means an operating company that,
32 at the time a rural business growth investment is made, meets
33 the following criteria:

34 *a.* Has its principal business operations in Iowa.

35 *b.* Employs fewer than two hundred fifty employees.

1 c. The majority of the operating company's employees perform
2 work in a rural area, except if the operating company's primary
3 function is in the service industry or construction industry,
4 the performance of work determination excludes employees who
5 perform the majority of the work at job sites that are not
6 located in a rural area.

7 8. "*Rural business growth fund*" means an entity licensed
8 under the federal small business investment program, as
9 provided in 15 U.S.C. ch. 14B, or the rural business investment
10 program as provided in 7 C.F.R. pt. 4290, that, with its
11 affiliates, has made investments in operating businesses in
12 excess of one hundred million dollars in the aggregate, of
13 which at least fifty million dollars was invested in operating
14 companies located in rural areas.

15 9. "*Rural business growth investment*" means any capital
16 or equity investment in, or loan to, any rural business
17 concern. To qualify as a "*rural business growth investment*",
18 the investment or loan to a rural business concern shall be at
19 least one year in duration. The rural business concern and its
20 affiliates shall not receive more than a total of five million
21 dollars in any two-year period from the proceeds of eligible
22 investments qualified under section 15E.83.

23 Sec. 2. NEW SECTION. 15E.82 Rural business investment tax
24 credit.

25 1. a. A tax credit shall be allowed against the taxes
26 imposed in chapter 422, divisions II, III, and V, chapter 432,
27 and against the moneys and credits tax imposed in section
28 533.329, for a portion of a taxpayer's equity investment in a
29 rural business growth fund.

30 b. An individual may claim a tax credit under this paragraph
31 of a partnership, limited liability company, S corporation,
32 estate, or trust electing to have income taxed directly to the
33 individual. Unless otherwise provided under subsection 8, the
34 amount claimed by the individual shall be based upon the pro
35 rata share of the individual's earnings from the partnership,

1 limited liability company, S corporation, estate, or trust.

2 2. *a.* For an investor in a rural business growth fund
3 to receive a tax credit, the rural business growth fund
4 shall submit an application to the authority to qualify the
5 investor's investment in the rural business growth fund. The
6 authority shall issue certificates for eligible investments
7 under this section after the twenty-four month reporting by
8 the rural business growth fund has been verified pursuant to
9 section 15E.83, subsection 3.

10 *b.* The authority shall issue such certificates so that not
11 more than eight million dollars may be claimed in a single tax
12 year.

13 *c.* The authority shall not issue a tax credit certificate
14 for investments under this section until verifying the report
15 filed by a rural business growth fund pertaining to a qualified
16 eligible investment pursuant to section 15E.83, subsection 3.

17 3. *a.* To claim a rural business investment tax credit under
18 this section, a taxpayer must include one or more tax credit
19 certificates with the taxpayer's tax return. A taxpayer shall
20 not include a tax credit certificate with a return filed for
21 a taxable year beginning prior to the tax year listed on the
22 certificate. The tax credit is not transferable except as
23 provided in subsection 8.

24 *b.* The tax credit certificate shall contain the taxpayer's
25 name, address, tax identification number, the amount of
26 the credit, the name of the qualifying investor, any other
27 information required by the department of revenue, and a place
28 for the name and tax identification number of a transferee and
29 the amount of the tax credit being transferred.

30 *c.* The tax credit certificate, unless rescinded by the
31 authority, shall be accepted by the department of revenue as
32 payment for taxes imposed pursuant to chapter 422, divisions
33 II, III, and V, chapter 432, and for the moneys and credits
34 tax imposed in section 533.329, subject to any conditions or
35 restrictions placed by the authority upon the face of the tax

1 credit certificate and subject to the limitations of this
2 section.

3 4. The tax credit shall equal a total of sixty percent
4 of an eligible investment, one-third of which may be claimed
5 each year for three years upon meeting the requirements of
6 section 15E.83. The taxpayer shall not claim the credit until
7 twenty-four months after the date of making an investment in
8 a rural business growth fund.

9 5. Any tax credit in excess of the taxpayer's liability
10 for the tax year may be credited to the tax liability for the
11 following five years or until depleted, whichever is earlier.
12 A tax credit is not refundable and shall not be carried back to
13 a tax year prior to the tax year in which the taxpayer first
14 claims the tax credit.

15 6. An entity claiming a rural business investment tax credit
16 is not required to pay any additional tax levied under section
17 505.14 or any other provision as a result of claiming the rural
18 business investment tax credit.

19 7. After receiving the report filed by the rural business
20 growth fund pursuant to section 15E.83, subsection 3, to verify
21 continuing eligibility for the tax credit, the authority
22 shall issue a tax credit certificate to be included with the
23 taxpayer's tax return pursuant to this section.

24 8. a. A tax credit certificate issued pursuant to this
25 section is not transferable except as provided in this
26 subsection.

27 b. Notwithstanding subsection 1, paragraph "b", if issued
28 to a partnership, limited liability company, or S corporation,
29 a tax credit certificate may be transferred to the partners,
30 members, or shareholders of such entity for their direct use,
31 and in any proportion, in accordance with the provisions of any
32 agreement among the partners, members, or shareholders, which
33 agreement shall be included with each return filed.

34 Sec. 3. NEW SECTION. 15E.83 Application — qualification
35 — report.

1 1. *a.* A rural business growth fund shall submit to the
2 economic development authority an application for a finding
3 of eligibility for an investment between January 1, 2016,
4 and January 30, 2016, on a form prescribed by the authority.
5 The rural business growth fund shall include a nonrefundable
6 application fee of five thousand dollars with the application.

7 *b.* The authority shall approve, deny, or deny in part the
8 application within sixty days of receiving the application.

9 *c.* (1) If the approved applications exceed the limitation
10 of forty million dollars in aggregate investments of all
11 applications, the authority shall reduce the portion that may
12 be qualified on a pro rata basis of the amount of a claim to the
13 total of all claims on applications approved.

14 (2) If the approved applications received between January
15 1, 2016, and January 30, 2016, do not meet or exceed the dollar
16 amount limitation provided in section 15E.82, subsection
17 2, paragraph "b", the authority may continue to accept
18 applications after that date on a first-come, first-served
19 basis.

20 *d.* The rural business growth fund shall collect and provide
21 the information required in this subsection, in the manner and
22 form prescribed by the authority.

23 2. *a.* Within one hundred eighty days of receiving notice
24 of qualification, the rural business growth fund shall issue
25 the eligible investment and receive cash in the amount of the
26 qualified amount provided by the authority. The rural business
27 growth fund shall provide the authority with evidence of the
28 receipt of the cash investment within one hundred eighty-five
29 days of receiving the authority's notice of qualification. The
30 rural business growth fund shall provide the authority the
31 names of the investors that are eligible for tax credits.

32 *b.* If the rural business growth fund fails to receive the
33 cash investment within one hundred eighty days of the receipt
34 of the notice of qualification from the authority, the eligible
35 investment is no longer qualified.

1 *c.* A rural business growth fund may transfer all or a
2 portion of its qualified eligible investment to an affiliate
3 prior to the expiration of the one hundred eighty days to
4 obtain the eligible investments in the amount qualified if
5 the rural business growth fund and the affiliate receiving
6 the qualified eligible investment notify the authority of the
7 transfer within one hundred eighty days of receiving notice
8 that the eligible investment is qualified and if the affiliate
9 includes any information required in the application submitted
10 pursuant to subsection 1.

11 3. *a.* A rural business growth fund shall report to the
12 authority concerning qualified eligible investments to verify
13 the investment's continuing qualification on a form prescribed
14 by the authority.

15 *b.* After submission of the initial report pursuant to
16 paragraph "a", the rural business growth fund shall submit an
17 annual report to the authority on a form prescribed by the
18 authority.

19 4. An investor shall forfeit the qualified status of an
20 investment and the authority shall not issue a tax credit
21 certificate, or shall rescind a tax credit certificate, upon
22 occurrence of any of the following:

23 *a.* The rural business growth fund redeems an eligible
24 investment prior to the fifth year after the investor's
25 investment in the rural business growth fund.

26 *b.* The rural business growth fund distributes to equity
27 holders an amount that exceeds the sum of the rural business
28 growth fund's cumulative operating income earned by the rural
29 business growth fund since issuing the eligible investment
30 and fifty percent of the eligible investments issued by the
31 rural business growth fund prior to the fifth year after the
32 investor's investment in the rural business growth fund.

33 *c.* The rural business growth fund fails to invest one
34 hundred percent of the eligible investment in rural business
35 growth investments in Iowa within twenty-four months of the

1 eligible investment being made in the rural business growth
2 fund.

3 *d.* (1) The rural business growth fund fails to maintain at
4 least one hundred percent of the eligible investment in rural
5 business growth investments in Iowa for at least five years
6 after the investor's investment in a rural business growth
7 fund.

8 (2) An investment shall be considered maintained by a
9 rural business growth fund, even if the rural business growth
10 investment has been sold or repaid, if the rural business
11 growth fund reinvests an amount equal to the capital returned
12 to or recovered by the rural business growth fund from the
13 original rural business growth investment, exclusive of
14 profits, in another eligible rural business growth investment
15 within twelve months of the receipt of such capital returned or
16 recovered. Periodic amounts received as repayment of principal
17 pursuant to regularly scheduled amortization payments on a loan
18 that is an eligible rural business growth investment shall be
19 treated as continuously invested in an eligible rural business
20 growth investment if the amounts are reinvested in one or more
21 eligible rural business growth investments by the end of the
22 following calendar year.

23 *e.* A rural business growth fund or investor of an eligible
24 investment pays the rural business growth fund or an affiliate
25 a fee in connection with the eligible investment or the rural
26 business growth investment prior to the fifth year after
27 the investor's investment in a rural business growth fund.
28 However, the rural business growth fund or investor of an
29 eligible investment may allocate or distribute income earned to
30 the equity owners or payment of reasonable interest on amounts
31 lent to a rural business growth fund or investor of an eligible
32 investment.

33 *f.* A rural business concern receiving a rural business
34 growth investment from a rural business growth fund, or any
35 affiliates of a rural business concern, directly or indirectly

1 does any of the following:

2 (1) Owns an ownership interest in a rural business growth
3 fund or affiliate of a rural business growth fund that is
4 providing the rural business growth investment.

5 (2) Loans to or invests in a rural business growth fund or
6 affiliate of a rural business growth fund where the proceeds of
7 the loan or investment are directly or indirectly used to fund
8 or refinance an eligible investment.

9 (3) For purposes of this paragraph, a rural business growth
10 fund is not an affiliate of a rural business concern solely as
11 a result of its rural business growth investment in the rural
12 business concern.

13 5. If the status of the eligible investment is no longer
14 qualified pursuant to subsection 4, all or a portion of the
15 tax credit claimed by a taxpayer is subject to disallowance,
16 recapture, or immediate repayment.

17 Sec. 4. APPLICABILITY. This Act applies to tax years
18 beginning on or after January 1, 2016, and to eligible
19 investments made on or after that date.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 This bill creates a tax credit against state individual and
24 corporate income tax, and against taxes imposed on financial
25 institutions, insurance companies, and credit unions for an
26 investor's equity investments through small business investment
27 companies identified as rural business growth funds for
28 investments in rural businesses.

29 The bill provides definitions for "affiliate", "cumulative
30 operating income", "eligible investment", "operating company",
31 "rural area", "rural business concern", "rural business growth
32 fund", and "rural business growth investment", as those terms
33 are used in the bill.

34 The bill requires a rural business growth fund to apply to
35 the economic development authority (authority) between January

1 1, 2016, and January 30, 2016, on behalf of investors in the
2 rural business growth fund to qualify the investment and the
3 amount of the investment for which the investor may receive
4 a tax credit. The bill requires the applicant to include a
5 \$5,000 nonrefundable application fee with the application.
6 The authority shall issue a tax credit certificate to the
7 investors upon receiving verification from the rural business
8 growth fund that a qualified eligible investment has been used
9 as required in the bill to invest in rural business concerns
10 in the state. The bill defines an "eligible investment" as
11 an equity investment in a rural business growth fund that is
12 acquired after the effective date of the bill in exchange for
13 cash, has 100 percent used by the rural business growth fund
14 to make investments in rural business concerns located in Iowa
15 within 24 months of the investment in a rural business growth
16 fund, is designated by the rural business growth fund as an
17 eligible investment and is qualified by the authority pursuant
18 to the bill, and an investment in which the rural business
19 growth fund manager invests at least 10 percent of the equity
20 investment. The amount of the tax credit is an amount equal to
21 20 percent of an eligible investment each year for three years.
22 A taxpayer may not claim the credit until 24 months after the
23 date of making an investment in a rural business growth fund.
24 The bill states the total maximum aggregate tax credit amount
25 the authority may allow per year is \$8 million.

26 A tax credit certificate issued under the bill is not
27 refundable and cannot be carried back to a tax year prior to
28 the tax year in which the taxpayer first redeems the credit.
29 A tax credit may be carried forward for five years or until
30 depleted. A tax credit received under the bill is only
31 transferable when issued to a partnership, limited liability
32 company, or S corporation and transferred to partners, members,
33 or shareholders of such entities, as agreed to by the partners,
34 members, or shareholders.

35 The bill states that an entity receiving a rural business

1 investment tax credit under the bill is not required to pay
2 any additional tax as a result of claiming the rural business
3 investment tax credit.

4 The bill requires rural business growth funds to submit
5 applications on behalf of investors to qualify an eligible
6 investment and receive an amount of tax credit for which the
7 investors are qualified between January 1, 2016, and January
8 30, 2016. The bill requires the authority to grant, deny,
9 or deny in part an application within 60 days of receipt of
10 the application. If the authority receives applications in
11 this time frame that would exceed \$40 million in aggregate
12 investments of all applicants to the program, the authority
13 shall qualify the portion for which the eligible investment is
14 qualified on a pro rata basis of the approved applications.
15 If the authority does not meet or exceed the \$40 million cap
16 in aggregate investments of all applications between January
17 1 and January 30, 2016, the authority may continue to receive
18 applications until meeting the \$8 million tax credit cap, on a
19 first-come, first-served basis.

20 The bill requires a rural business growth fund receiving
21 notice of the qualification of an eligible investment to issue
22 the eligible investment and receive the cash investment from
23 the investors for the amount qualified by the authority within
24 180 days of receipt of the notice. The rural business growth
25 fund shall provide the authority the names of the investors
26 that are eligible to receive tax credits within 185 days of
27 receipt of the qualified notice from the authority. If a rural
28 business growth fund fails to receive the cash investment
29 for which it received qualification by the authority, the
30 eligible investment is no longer qualified for a tax credit.
31 Also, during this 180 days, the rural business growth fund
32 may transfer all or a portion of its qualified eligible
33 investment to an affiliate as long as the affiliate receiving
34 the qualified eligible investment notifies the authority of the
35 transfer within 180 days of receiving the qualified notice from

1 the authority.

2 The bill requires a rural business growth fund with a
3 qualified eligible investment to report to the authority about
4 the qualified eligible investment to verify the investment's
5 eligibility. After submitting this initial report, the rural
6 business growth fund shall submit a report annually to the
7 authority.

8 The bill states that an eligible investment is no longer
9 qualified and the authority shall not issue or shall rescind a
10 tax credit certificate in circumstances provided in the bill,
11 including redemption of the investment prior to the five-year
12 anniversary of the investor's investment, improper distribution
13 of the investment, failure to invest 100 percent of the
14 eligible investment as a rural business growth investment or
15 failure to maintain 100 percent of the eligible investment in a
16 rural business growth investment, a rural business growth fund
17 or an investor pays the rural business growth fund or affiliate
18 a fee in connection with the eligible investment or the rural
19 business growth investment before the five-year anniversary of
20 the investor's investment in the rural business growth fund
21 pursuant to the bill, or a rural business concern receiving
22 a rural business growth investment has improper ties to the
23 rural business growth fund. The bill allows for recapture,
24 disallowance, or immediate repayment of all or a portion of the
25 tax credit in the above circumstances.

26 The bill applies to tax years beginning on or after January
27 1, 2016.